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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,405	04/14/2006	Frank Erwin Schulte	740116-614	8708

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ROBERT'S MLOTKOWSKI SAFRAN & COLE, P.C.
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P.O. Box 10064
MCLEAN, VA 22102-8064

EXAMINER

WOOD, JONATHAN K

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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04/16/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/595,405

Applicant(s)

SCHULTE ET AL.

Examiner

JONATHAN WOOD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because lines 16-17 represents added subject matter to the claim and it is not properly indicated as so. Please see MPEP section 714. Appropriate correction is required.
2. Claim 29 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. A guide sleeve which projects from the pump housing toward the dispenser head and surrounds the pump shaft is already claimed in lines 18-19 of claim 1.
3. Claim 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. A spring which pretensions the pump shaft and is located between the pump housing and dispenser head is already claimed in lines 16-17 of claim 1.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 31, 34, 35, and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 recites 'a spring which pretensions the pump shaft' in lines 1 and 2. A spring has already been defined in lines 16-17 of claim 1 and it is unclear if this limitation represents a new spring located radially outward of the pump shaft or is further limiting the spring of claim 1. For purposes of examination, examiner assumes applicant intended to further limit the spring of claim 1.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that

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the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 19-38 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,826,756 to *Foster* (*Foster*) in view of US Patent No. 5,507,626 to *Yang* (*Yang*) and US Patent No. 6,910,606 B2 to *Martin et al.* (*Martin*).

Foster discloses a dispenser pump comprising a pump housing (14') attachable to a container (col. 3, line 33), a pump shaft (16') movable relative to the pump housing (col. 3, ll. 20-21), a dispenser head (56') on the pump shaft, a first sleeve section (98) which extends from the dispenser head toward the pump housing (col. 6, ll. 2-3) and radially surrounds the pump shaft, a third sleeve section (92') mounted on a collar (26') of the pump housing and movable into the first sleeve to form a telescopically extendable splash protection around the pump shaft (col. 6, ll. 2-7), a helical spring (42') located radially outward of the pump shaft between the pump housing and dispenser head, and a guide sleeve (indicated generally by 86' in Figure 5) which extends from the pump toward the dispenser head, wherein the outside of the guide sleeve guidingly supports the spring (Figure 6). *Foster* does not disclose a second sleeve section which

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extends from the first sleeve section, is movable into the first sleeve, and allows for the third sleeve to be moved into it so that the second sleeve extends peripherally over the third sleeve. *Foster* also does not disclose that the sleeve sections are connected via cooperating projections, one of which is an annular shoulder, or that the guide sleeve sealingly guides the pump shaft at a free end thereof.

However, *Yang* discloses a pumping mechanism with a second sleeve section (20) which extends from a first sleeve section (10) and which is movable into the first sleeve section, the second sleeve section extending peripherally over a third sleeve section (30) (col. 3, ll. 1-20). *Yang* also discloses the sleeve sections having cooperating projections (23 and 40), one of which is an annular shoulder (40). At the time of invention, it would have been obvious to a person of ordinary skill in the art to have incorporated the teaching of *Yang* to provide three telescoping sleeve sections on a pumping mechanism with the dispenser pump of *Foster* and to interconnect those sleeve sections by cooperating projections in order to reduce the pump strokes required to pump a certain amount of fluid while keeping the pump to a compact size (*Yang*, col. 1, ll. 49-54) and to prevent pulling apart of the sleeve sections (*Yang*, col. 3, ll. 14-16). This combination would require inserting an additional second sleeve in between the first and third sleeves of *Foster* discussed above.

Further, *Martin* discloses a pumping mechanism which utilizes a guide sleeve (88) contacting a spring (190) on its outside and sealingly guiding a pump shaft (102) on a free end thereof through the use of an annular seal (90). It

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would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Martin*, to have incorporated an annular seal onto the guide sleeve of *Foster* to sealingly guide the pump shaft in order to prevent contamination of the interior of the sleeve sections and spring.

Regarding claim 30, *Foster* as modified by *Yang* and *Martin* shows the third sleeve radially surrounding the guide sleeve at a distance and an annular space formed between (Figure 5).

Regarding claims 33-36, *Foster* as modified by *Yang* and *Martins* shows the spring located radially between the pump shaft and sleeve sections (Figure 5).

10. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Foster* in view of *Yang* and *Martin* as applied to claim 19 above, and further in view of US Patent No. 5,156,307 to *Callahan et al.* (*Callahan*).

Foster as modified by *Yang* and *Martin* shows all aspects of the applicant's invention as set forth in claim 19 and further shows a valve with a valve ball (*Foster*, 36'), but does not specifically disclose the valve ball is of plastic material. However, *Callahan* discloses a valve ball (13) of metal, plastic or ceramic (col. 3, line 5). It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Callahan*, to have made the valve ball of *Foster* as modified by *Yang* and *Martin* of plastic material in order to make the check valve more resistant to corrosive and aggressive fluids passing through the dispenser.

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11. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Foster* in view of *Yang* and *Martin* as applied to claim 19 above, and further in view of US Patent No. 4,071,172 to *Balogh* (*Balogh*).

Foster as modified by *Yang* and *Martin* shows all aspects of the applicant's invention as set forth in claim 19, but does not specifically disclose all parts in a location exposed to liquid being dispensed are made of plastic. However, *Balogh* discloses a liquid dispenser in which all the parts are made of a plastic material (col. 1, ll. 33-35). It would have been obvious to one of ordinary skill at the time of the invention, under the teachings of *Balogh*, to have made all parts of the dispenser of *Foster* as modified by *Yang* and *Martin* exposed to liquid being dispensed of plastic material in order to increase the dispenser's resistance to corrosive and aggressive fluids.

12. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Foster* in view of *Martin* and *Balogh*.

Foster discloses a dispenser pump comprising a pump housing (14') attachable to a container (col. 3, line 33), a pump shaft (16') movable relative to the pump housing (col. 3, ll. 20-21), a dispenser head (56') on the pump shaft, a spring (42') located outside of the pump shaft and between the pump housing and dispenser head, a first sleeve section (98) surrounding the spring, and a guide sleeve (indicated generally by 86' in Figure 5) which extends from the pump toward the dispenser head, wherein the outside of the guide sleeve guidingly supports the spring (Figure 6). *Foster* does not disclose that the guide

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sleeve sealingly guides the pump shaft at a free end thereof or that all parts of the dispenser in a location exposed to liquid being dispensed are made of plastic.

However, *Martin* discloses a pumping mechanism which utilizes a guide sleeve (88) contacting a spring (190) on its outside and sealingly guiding a pump shaft (102) on a free end thereof through the use of an annular seal (90). It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Martin*, to have incorporated an annular seal onto the guide sleeve of *Foster* to sealingly guide the pump shaft in order to prevent contamination of the interior of the sleeve sections and spring.

Further, *Balogh* discloses a liquid dispenser in which all the parts are made of a plastic material (col. 1, ll. 33-35). It would have been obvious to one of ordinary skill at the time of the invention, under the teachings of *Balogh*, to have made all parts of the dispenser of *Foster* as modified by *Yang* and *Martin* exposed to liquid being dispensed of plastic material in order to increase the dispenser's resistance to corrosive and aggressive fluids.

Response to Arguments

13. Applicant's arguments with respect to claims 19-43 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

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See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754